20-583

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 566.

LUTHER C. CLARK, PLAINTIFF IN ERROR,

vs.

THE CITY OF IOWA CITY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED OCTOBER 9, 1874.

Oct. 9, 1874

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1 Pleas in the circuit court of the United States of America for the district of Iowa, at a term thereof begun and holden at the United States court-room, in the city of Des Moines, in the State of Iowa and district aforesaid, on the second Monday of May, it being the 11th day of May, A. D. 1874, before the Hon. Sam'l F. Miller, associate justice, and Hon. James M. Love, United States district judge for said district of Iowa.

2, 3 Be it remembered that heretofore, to wit, on the 31st day of January, 1874, Luther Clark, by his attys., Mess. Grant & Smith, filed in the clerk's office of the circuit court of United States for the district of Iowa, his præcipie for a summons against Iowa City, which said præcipie is in words and figures following, to wit:

4 *Precipie.*

In U. S. circuit court, district of Iowa, at Des Moines.

LUTHER C. CLARK
vs.
THE CITY OF IOWA CITY.

The clerk of said court is hereby requested to file the within petition in this cause, & issue summons to said defendants, returnable at next term, 1874, of said court at Des Moines, in plea of debt, five hundred dollars ($500) damages, five hundred dollars (500) interest, & costs of this suit.

(Signed) GRANT & SMITH,
Attys. for Pltffs.

(Endorsed:) Filed Jan'y 31, 1874. Clerk.

5 And thereupon there was issued from said clerk's office a summons against said Iowa City, which said summons is in words and figures following, to wit:

6 *Summous U. S. C. C.*

UNITED STATES OF AMERICA,
District of Iowa:

To the marshal of the district of Iowa:

In the the name of the President of the United States, you are hereby commanded to summon the City of Iowa City, a citizen of the State of Iowa, to appear before the honorable circuit court of the United States in and for the district of Iowa, on the first day of the next term thereof, to be begun and holden at the city of Des Moines on the second Monday of May next, it being the 11th day of May, A. D. 1874, then and there to answer unto Luther Clark, a citizen of the State of New York, in a plea of debt on bond, coupons issued by said City of Iowa City, in the sum of five hundred dollars, to the damage of said plaintiff in the sum of five hundred dollars.

Hereof fail not, and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Des Moines, this the

31 day of January, A. D. 1874, and of the Independence of the United States the 98.

[L. S.] (Signed) GEORGE B. CORKHILL,
Clerk U. S. Circuit Court, District of Iowa.

7 And afterwards, to wit, on the 10th day of Feb'y, 1874, said summons was returned and filed in said clerk's office, with the following acceptance of service endorsed thereon, which is in words and figures following, to wit:

8 No. 1766. Summons. Circuit court of the United States, district of Iowa. Luther Clark *vs.* The City of Iowa City. Filed 10 day of Feb'y, 1874. George B. Corkhill, clerk. Grant & Smith, attorney for plaintiff. Residence, Davenport.

Due & legal service of the within summons admitted and accepted, February 4th, 1874, Iowa City, by

LOUIS H. JACKSON, *Solicitor.*

9 On the 31st day of January, 1874, said plaintiff by his said attys., filed in said clerk's office his declaration against said defendant, which said declaration is in words and figures following, to wit:

10 *Declaration.*

In U. S. circuit court for district of Iowa, at Des Moines, May term, 1874.

LUTHER CLARK
vs.
THE CITY OF IOWA CITY.

The City of Iowa City was summoned to answer Luther C. Clark in a plea of debt, and thereupon the said Luther C. Clark, who avers that he is a citizen of the State of New York, complains of the said City of Iowa City, which he avers to be a municipal corporation, created by existing under the laws and a citizen of the State of Iowa, & for a cause thereof, states that heretofore, to wit, on the first day of
11 March, A. D. 1856, the said defendant at said circuit, by its certain writings obligatory Nos. 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, sealed with its corporal seal, signed by G. D. Woodin, its mayor, & attested by J. G. Sperry, its recorder, bearing the said date & here shown to the court, acknowledged itself to be indebted & bound to pay to John R. Dix, or bearer, the sum of five hundred dollars ($500) by each of said bonds Nos. 84, 85, 86, 87, 88, 89, 90, 91, 92, at the office of E. W. Clark, Dodge & Co., in the city of New York, on the first day of Jan., A. D. 1876, with interest on said sums at the rate of ten per cent. per annum, payable annually on the first day of January in each year, and for said interest coupons or interest-warrants were annexed to each of said bonds, and the plaintiff avers that he is the bearer of the
12 coupons herein named, a copy of which, as well as the bonds, is hereto annexed & made a part hereof, and that there is due & unpaid thereon the instalments of interest due on the first day of January, A. D. 1860, on said bonds, numbers above given, making the (10) coupons of fifty dollars ($50) each, making five hundred ($500) dollars, & interest on said sum of $500, at the rate of 7 per cent. per annum,

from January 1st, A. D. 1860, and the said coupons are due, & the defendant, though often requested, has neglected to pay the same, whereby the said defendant has become liable to pay, and an action has accrued to the plaintiff to have & recover of the said defendant the sum of $500 debt & $500 damages, whereupon the plaintiff sues & prays judgment for said sums of $500, interest & costs of this suit.

13 (Signed) GRANT & SMITH,
Attys. for Plaintiff.

STATE OF IOWA, *Scott County, ss:*

I, James Grant, being duly sworn, do state on oath that I am one of the pltffs. attys.; that this suit is for the recovery of money alone, & is upon written instruments which are in my possession & under my control. I James Grant state that I am the plfs. atty.; that I know the contents of the foregoing declaration, & the facts therein stated are true as I verily believe.

(Signed) JAMES GRANT.

Subscribed & sworn to by James Grant, before me & in my presence this day of , A. D. 1874.

[L. S.] (Signed) W. M. KAEISER,
Notary Public, Scott Co., Iowa.

14 In U. S. circuit court, district of Iowa, at Des Moines.
No. 64. $500.00.

Bond of the City of Iowa City.

UNITED STATES OF AMERICA, *State of Iowa:*

Be it known that the City of Iowa City owes to John A. Dix, or bearer, the sum of five hundred dollars for money borrowed to pay the subscription of said city to the capital stock of the Mississippi & Missouri Railroad Co., the receipt whereof is hereby acknowledged, & which sum the said Iowa City hereby promises to pay at the office of E. W. Clark, Dodge & Co., in the city of New York on the first day of January, eighteen hundred and seventy-six, with interest on said sum of five hundred dollars at the rate of ten per cent. per annum, payable annually
15 on the first day of January in each year, & the faith of the said Iowa City is hereby pledged for the annual payment of interest & the ultimate redemption of the principal.

And I, G. D. Woodin, mayor of said Iowa City, do hereby certify that by a vote of the legal electors of the said Iowa City at an election held on the 12th day of March, 1855, in accordance with an ordinance of the city council of Iowa City, sanctioning the same, that the said city was authorized to issue city bonds to the amount of fifty thousand dollars, for the purpose aforesaid, bearing interest at ten per cent. per annum & that the above is one of the bonds issued for said purpose, & is entitled to the benefits arising from the sinking-fund created by said ordinance to provide for the payment of principal & interest of said bonds.

16 In testimony whereof, the said city has caused the corporate seal thereof to be affixed to this bond, & the same to be signed by the mayor & attested by the recorder this first day of March, 1856, attested by J. G. Sperry, recorder.

(Signed) G. D. WOODIN.

Bond for security.

In U. S. circuit court, district of Iowa, at Des Moines.

LUTHER C. CLARK
v.
THE CITY OF IOWA CITY.

I enter myself as security for costs in this cause, & obligate myself to pay all costs accruing to the opposite party or the officers of this court by reason of said suit.

(Signed) W. M. KAEISER.

17 Afterwards, to wit, on the 12th day of May, 1874, said defendant, by its attorneys, Mess. Robinson & Patterson, filed in said clerk's office in said cause its answer, which said answer is in words and figures following, to wit:

In the U. S. circuit court for dist. of Iowa, at Des Moines, May term, 1874.

LUTHER C. CLARK
vs.
THE CITY OF IOWA CITY.

Comes now the defendant, The City of Iowa City, and, for answer to petition of plaintiffs, says she denies that she is indebted to the plaintiffs in the sum of five hundred dollars debt & five hundred dollars damage, or in any sum whatever.

2nd. And for further answer the defendant says that all the coupons upon which the plaintiff's cause of action is founded were respect-
18 ively severed from said bonds mentioned in plaintiff's petition, to wit, Nos. 83, 84, 85, 86, 87, 88, 89, 90, 91, & 92, long since and before the commencement of this suit, were negotiated and transferred after they had been so cutt off from the aforesaid bonds, until by purchase and delivery they were received by the plaintiffs. That said bonds above numbered, from which said coupons in suit were severed, were fully paid off and satisfied by this defendant, by giving new bonds to another holder thereof, a long time previous to the commencement of this suit. That the said plaintiff was not the owner or holder of the aforementioned bonds or either of them at the time the same were fully paid off by said defendant. That the said several supposed causes of action of plaintiff mentioned did not, nor did any or either of them, ac-
19 crue at any time within ten years next before the commencement of said plaintiff's action against the defendant in this behalf, in manner and form as the said plaintiff hath above thereof complained, and this the said defendant is ready to verify; wherefore she prays judgment if the said plaintiff ought to have or maintain his aforesaid action.

(Signed) ROBINSON & PATTERSON,
Attys. for Deft.

STATE OF IOWA, *Johnson County:*

I, Jacob Ricord, being duly sworn, state that I have for several years last past been a member of the Iowa City council and chairman of the finance committee thereof; that as such I am familiar with the financial

affairs of said city; that I am acquainted with the facts stated in the above answer; that the same has been read to me and th ey
20 are true as I verily believe.

(Signed) JACOB RICORD.

Subscribed & sworn to by Jacob Ricord before me, on this 8th day of May.

[L. S.] (Signed) L. B. PATTERSON,
Notary Public.

(Endorsed:) Filed May 12, 1874. George B. Corkhill, clerk.

21 And on the same day, to wit, May 12, 1874, said plaintiff, by his said attys., filed in said clerk's office his demurrer to defendant's answer, which said demurrer is in words and figures following, to wit:

U. S. C. C. dis. Iowa, May term, 1874.

LUTHER C. CLARK
v.
THE CITY OF IOWA CITY.

Now comes the plaintiff and demurs to the defendant's plea of the statute of limitations.

Because it appears from the petition, and the fact is admitted by the plea, that the statute had not run for ten years against the covenant in the bonds to pay the interest, and therefore cause of action is not barred on the coupons; and the payment or *extent* of the bonds to another person than the holder of the coupons does not bar his remedy on
22 the coupon, his right of action running on the coupons until the remedy therein is barred by running of the statute against the bond itself.

(Signed) GRANT & SMITH, *for Plf.*

(Endorsed:) Filed May 12, 1874. George B. Corkhill, clerk.

23 Afterwards, to wit, on the 13th day of May, 1874, the same being of the May term of said court, there appears in the records of the proceedings thereof, in said cause, the following entry, to wit:

United States circuit court, district of Iowa, May term, 1874.

WEDNESDAY, *May* 13, 1874.

LUTHER CLARK
vs. No. 1766. Law.
IOWA CITY.

This cause came on this day for hearing upon the demurrer to defendant's plea. Plff. appeared by Grant & Smith, and defendant by Robinson & Patterson. The court, after hearing argument of counsel thereon, took the same under advisement.

24 On the 16th day of May, the same being of the May term, 1874, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, May term, 1874.

SATURDAY, *May* 16, 1874.

LUTHER CLARK
vs.
IOWA CITY. } No. 1766. Law.

This cause having been heretofore submitted to the court upon plaintiff's demurrer to defendant's plea, and the court being now fully advised in the premises, ordered that said demurrer be, and the same is hereby, overruled; and the said plaintiff electing to stand on his said demurrer, and refusing to reply or plead further, it is ordered that judgment be entered for defendant upon said demurrer. It is therefore considered and adjudged that defendant have and recover of and from the plaintiff its costs herein expended, taxed at $, and that execution issue
25 therefor.

And it is ordered that it be certified to the Supreme Court of the United States that the judges to whom the demurrer was submitted differed in opinion on the questions raised by the demurrer as to whether the statute of limitations was a bar to the action.

26 And afterwards, to wit, on the 2d day of October, 1874, there was filed in said clerk's office a certificate of division of opinion, which said certificate is in words and figures following, to wit:

27 In the circuit court of the United States for the district of Iowa, May term, 1874.

LUTHER C. CLARK
vs.
THE CITY OF IOWA CITY. } No. 1766. Law.

Certificate of division of opinion.

Be it remembered that heretofore, to wit, on the 31st day of January, A. D. 1874, the plaintiff Luther C. Clark, being the holder of a large amount of coupons payable to bearer, which had been attached to bonds of the City of Iowa City, filed his declaration in an action of debt against the defendant, a municipal corporation, to recover on said coupons, which said coupons had by their terms been due for more than ten years before the commencement of *of* said action. The time for the payment of the bonds from which said coupons were cut, having not yet elapsed to all of such coupons as described in said declaration, the defendant set up
28 a special defense, alleging that said coupons were barred by the statute of limitations of Iowa, said indebtedness thereon not having accrued within ten years next preceeding the commencement of this action, and alleging that the bonds to which said coupons were originally attached would be barred if not sued within ten years from the maturity thereof.

The said bonds of the defendant from which the coupons in suit had been detached, contained a covenant or promise to pay to the holder thereof interest at a specified rate per annum, payable annually, until the principal sum should be paid on the presentation of the annexed interest-coupons respectively, at the place therein designated.

The point made in the pleadings and presented to the court for decision was this, "Does the statute of limitation commence to run upon

the coupons in suit from their own maturity respectively, or does it commence to run upon the coupons only from the maturity of the bonds to which said coupons belonged?" On which point the opinion'
29 of the judges were opposed.

And thereupon the cause coming on for final hearing, it was ordered and adjudged that the defendant go hence without day and have judgment for its costs, and judgment was accordingly entered, to which ruling the plaintiff excepted; thereupon, on motion of plaintiff by his counsel that the point on which the disagreement hath happened, may, during the term, under the discretion of the judges, be stated and certified under the seal of the court to the Supreme Court to be finally decided:

It is ordered that the foregoing statement of the pleadings and the question on which the disagreement of opinion hath happened, which is made under the direction of the judges, *he* certified accordingly, at the request of counsel for the plaintiffs, and the law in such cases made and provided, which is accordingly done.

(Signed) SAM. F. MILLER.
J. M. LOVE.

(Endorsed:) Filed Oct. 2, 1874. George B. Corkhill, clerk.

30 And on the 19th day of September, 1874, said plaintiff, by his said attys., filed in said clerk's office his p'ayer for a writ of error, in said cause, in words and figures as follows, to wit:

31 In the circuit court of the United States for the district of Iowa.

LUTHER C. CLARK
vs.
THE CITY OF IOWA CITY.

Now comes the plaintiff Luther C. Clark, and prays for a writ of error in this cause, for that the court erred in deciding adverse to his claim herein.

(Signed) GRANT & SMITH,
Attys. for Plff.

(Endorsed:) Filed Sept. 19, 1874. George B. Corkhill, clerk.

32 On the same day to wit, there was filed in said clerk's office a writ of error, which said writ of error is in words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States, for the district of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in said circuit court, before you, between Luther C. Clark and The City of Iowa City, a manifest error hath happened to the great damage of the said Luther C. Clark as by his complaint appears; and we, being willing that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be there-

n given, that then, under your seal, distinctly and openly, you send the ecord and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 19th day of Sept., in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

[L. S.] GEORGE B. CORKHILL,
Clerk C. C. U. S. Dist. of Iowa.

(Endorsed:) Filed Sept. 19, 1874. George B. Corkhill, clerk.

33 And on the 30th day of September, 1874, the said plaintiff, by his said attys., filed in said clerk's office his appeal bond, which said appeal bond is in words and figures following, to wit:

Know all men by these presents that we Luther C. Clark, principal, and Wm. M. Kaeiser, surety, are held and firmly bound unto The City of Iowa City, in the penal sum of ($100) one hundred dollars, to which payment well and truly to be made we bind ourselves, and each of us, by these presents.

Witness our hands and seals this 26 day of September, A. D. 1874.

(Signed) LUTHER C. CLARK, [SEAL.]
By GRANT & SMITH, *his Attys.*
WM. M. KAEISER. [SEAL.]

The condition of this obligation is this: Whereas at the May term of the United States circuit court for the district of Iowa, in a cause therein pending wherein the said Luther C. Clark was plaintiff, and the said City of Iowa City was defendant, the court being divided in opin-
34 ion, a judgment was rendered against the said plaintiff; the said plaintiff having applied for and obtained a certification of division of opinion, as aforesaid, and a writ of error in said cause and filed the same in the clerk's office of said court to reverse said judgment, and determine the issue presented in said cause, and a citation directed to said defendant citing and admonishing it to be and appear at the Supreme Court of the United States, commencing on the 2nd Monday in October next:

The condition of this obligation is this: If the said Clark prosecutes his appeal to effect, and answer all damages and costs if he fails on said appeal, this obligation be void otherwise to remain in full force and effect.

Approved: SAM. F. MILLER.

(Endorsed:) Filed Sep. 30, 1874. George B. Corkhill, clerk.

35 And on the 29th day of September, A. D. 1874, there was filed in said clerk's office a citation in words and figures following, to wit:

36 In the circuit court of the United States for the district of Iowa, May term, 1874.

LUTHER C. CLARK,
vs.
THE CITY OF IOWA CITY.

To The City of Iowa City, defendant:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at a term to be holden at the Capitol, at Washington City, D. C., on the second Monday in October next, 1874, pursuant to a certification on division of opinion of the associate justice and the district judge, and a writ of error filed in the office of the clerk of said court, wherein you are defendant and the said Clark is plaintiff, and show cause, if any there be, why the judgment rendered against the plaintiff therein should not be reversed and speedy justice done to the parties herein.

SAM. F. MILLER.

Due and legal service of the foregoing is hereby accepted this 2nd day of September, 1874.

L. B. PATTERSON,
Atty. for Deft.

(Indorsed:) Clark *vs.* Iowa City. Citation filed Sep. 29, 1874. George B. Corkhill, clerk.

37 In the circuit court of the United States for the district of Iowa.

I, George B. Corkhill, clerk of said court for said district, do hereby certify that the above and foregoing transcript contains full, true, and complete copies of the pleadings, papers, and record entries in a certain cause adjudicated in said court, wherein Luther C. Clark was plaintiff and the City of Iowa City was defendant, as full, true, and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at my office in Des Moines, in said district, this 2d day of October, A. D. 1874.

[SEAL.]

GEORGE B. CORKHILL,
Clerk U. S. C. C., District of Iowa.

38 Supreme Court of the United States, October term, 1874.

LUTHER C. CLARK, PLFF. IN ERROR,
vs.
THE CITY OF IOWA CITY, DEFT. IN ERROR.

Error from the United States circuit court for the district of Iowa.

Now comes Luther C. Clark and says that in the record and proceedings of said cause there is error in this, to wit: That the decision of the court that the statute of limitations applied to the coupons on which suit was brought was erroneous, and the statute of limitations as pleaded by the defendant did not bar the plaintiff's action. Therefore we pray that said judgment may be reversed, &c.

JAMES GRANT,
Plff. in error.

(Indorsement on cover:) No. 566. Luther C. Clark, plaintiff in error, vs. The City of Iowa City. Iowa C. C. U. S. Filed 9th October, 1874.

20-583

Supreme Court of the United States.

No. 566.

LUTHER C. CLARK, PLAINTIFF IN ERROR,

vs.

IOWA CITY, DEFENDANT IN ERROR.

Error from the District of Iowa, on a Certificate of Division.

Argument for Luther C. Clark, Plaintiff in Error,
BY JAMES GRANT.

The distinction which is endeavored to be made, in relation to these coupons, that by being severed from the bond they become a different kind of paper, more adverse to the commercial holder, has not received the countenance of this court.

It is true, as was said, in National Exchange Bank *vs.* Hartford F. & P. R. R. Co., 8 R. I. R., 375, that when once detached and negotiated, they cease to be mere incidents to the bond and become an independent claim, and the amount may be sued separately and collected, though the bond be paid; but they continue to be, not, as is contended in these cases, which this court has already overruled, separate covenants to pay installments of money, but the incident of interest on the bond, not barred by the statute, until the bond is barred, but copies of the body of the bond, made transferable for the convenience of the holders to enhance the value of the bond.

JAMES GRANT,
For Plaintiff in Error.

20-583

Supreme Court of the United States.

OCTOBER TERM, 1874.

Luther C. Clark

Plaintiff in Error. 566

vs.

The City of Iowa City.

Defendant in Error.

Error of the Circuit Court of the District of Iowa.

BRIEF FOR DEFENDANT IN ERROR,

BY

ROBINSON & PATTERSON.

Republican Print. Iowa City, Iowa.

Supreme Court of the United States.

Luther C. Clark

vs.

The City of Iowa City.

Error of the Circuit Court of the District of Iowa.

BRIEF FOR DEFENDANT IN ERROR,

BY

ROBINSON & PATTERSON,

IOWA CITY, IOWA.

STATEMENT OF THE CASE.

This is a writ of error to reverse a judgment for costs rendered against the plaintiff on the 16th day of May, 1874, by the Circuit Court for the District of Iowa, at the May Term thereof.

The action was debt. Commenced on the —— day of January, 1874, on ten coupons or interest warrants, for fifty dollars each, payable to bearer on the 1st day of January, 1860,

which had been cut from bonds issued by the defendant to the Mississippi & Missouri Railroad Company.

The defendant pleaded the statute of limitation, alleging that more than ten years had elapsed since the maturity of the coupons and before the commencement of this suit. That said coupons came into the possession of the plaintiff after they had been severed from the bonds by purchase in the market. That the bonds from which said coupons were cut had for sometime previous to the commencement of the suit been taken up, satisfied and cancelled by the defendant. That the plaintiff was not the owner of the bonds at the time they were so paid off and satisfied.

To this plea of the defendant the plaintiff demurred and the Court rendered judgment thereon against the plaintiff for costs, the plaintiff electing to stand on his demurrer and refusing to reply or plead.

The Judges to whom demurrer was submitted differed in opinion on the question raised by demurrer and it was ordered that it be referred to this Court.

ARGUMENT FOR DEFENDANT.

The simple question, as we understand it, for this Court to determine is this: Can the statute of limitation be successfully pleaded to a cause of action founded on interest coupons cut from the original bonds and negotiated in market to third persons, the bonds themselves having been paid?

The coupons are for fifty dollars each, payable to bearer at the office of E. W. Clark, Dodge & Co., in the city of New York, on the 1st day of January, 1860.

The time fixed by the statute for barring claims of this character in Iowa (ten years) having expired since the maturity of the coupons in suit and long before the commencement of the same—the same period in our State barring suits upon bonds as well as upon coupons and all written evidences of debt.

The code of Iowa, sections 2529, paragraph 4, is as follows:

"Those founded on written contracts, on judgments of "any courts, except those courts provided for in the next sec- "tion, and those brought for the recovery of real property "within ten years."

The position of the plaintiff in the Court below, as we understand it to be, and as we presume it will be here, is that we cannot plead the bar until the bonds from which they were cut have run the full time fixed by the statute to bar them.

We believe that the exact point made by the record in this case has never been decided by this Court. We shall ask the indulgence of the Court, should we examine and refer the Court to some of the elementary principles upon which the statutes of limitation are founded, and the policy of the law in their enactment, and the liberality of courts in their application and enforcement, to secure the full benefits intended by their enactment.

More than two centuries since the statutes of limitation were enacted, the leading features of which are the enactments of to-day. The wisdom of such statutes have been fully demonstrated by their re enactment from time to time in all civilized countries and especially those nations that have made rapid progress in commerce.

Since their first enactment a great change may be noticed in the views of courts in reference thereto. They were, in early days, looked upon with distrust by courts in their application to cases arising under them, and every obstruction consistent with duty was placed in the way of their enforcement. At this day the judicial mind is more liberal in its view in reference to the policy of their enactment and the beneficial effects of their liberal and extensive enforcement. Anciently the statute was said to be founded on two theories, *first*, a presumption of the payment, or release arising from length of time. *Secondly*, as a punishment for the negligence of creditors in not enforcing demands within reasonable time after an action might have been brought.

The present view of the courts we apprehend, is that they are eminently statutes of *repose*, which are looked upon as not

discreditable or unjust but should be favored by courts as a policy for the prompt enforcement of all demands, an eminently wise and safe rule for a commercial people, both for the creditor and debtor classes. The whole policy of the present times being to shorten the credit system by every fair and consistent means within the legitimate province of the law makers and the judiciary.

It will perhaps assist in arriving at a correct conclusion in the application of the statute to the case in bar, to briefly review some of the fundamental principles involved in their application. Prominent amongst which would be to definitely settle the time at which the statute will commence to run against a claim. From the earliest history of the statute down to the present time, it seems to have been a fundamental principle sustained by an unbroken series of decisions that it begins to run from the time the plaintiff has a full and perfect right to prosecute his demand.

Angel, in his work on Limitations, section 42, states the rule in the following language :

"The rule of the civil law is that prescription only begins "to run from the time when the creditor has a full and per- "fect right to prosecute his demand. The same rule holds, of "course, in respect to the legislative acts of limitation of "Great Britain and those of the United States, etc. In gener- "al it may be said that it is a rule in courts of equity as well "as in courts of law, that the cause of action or suit arises "when and as soon as the party has a right to apply to the "proper tribunals for relief."

In Little vs. Blunt, 9 Pickering, 490, Wilde, Judge, uses the following language :

"An action accrues to a party whenever he has a right to "commence it. On every promise therefore, to pay money "on demand, whether expressed or implied, an action accrues "immediately after the promise. The plain intent of the statute was to allow six years to a creditor within which to "commence his action, and this period commences the instant

"he can by law maintain an action, etc. In other words, an "action accrues to a party whenever he has a right to com- "mence it and from that time the statute begins to operate."

To same effect see Arnold vs. U. S, 9 Cranch 104.

Miller vs. Miller, 7 Pick., 112.

Dixon vs. Holdroyd, 7 Eilis & B., 903.

Bennet vs. Herring, 1 Fla., 387, etc., etc.

In Iowa the same rule has been frequently recognized.

In Sherman vs. Western Stage Company, 24 Iowa, 553, Dillon Ch. J., uses the following language:

"We are agreed in holding that the provisions of our "statute quoted *infra* do not affect the common law rules of "construing statutes of limitations. Those rules are, First, "the statute begins to run from the time the cause of action "accrues." Cole, J., in the same case, page 552, uses the following language:

"When the wrongful act is done, action, in the language "of Mr. Greenleaf, may be instantly maintained, and from the time the statute begins to run."

Baker vs. Johnson County, 33 Iowa, 155.

This apparent unbroken rule of the common law in reference to the *time* at which the statute commences to run, the Iowa legislature has seen fit to affirm by a positive statutory enactment.

Section 2529 of the Revision of Iowa enacts as follows:

"The following action may be brought within the time "herein limited respectively after the causes accrue, and not "afterwards except when otherwise specially declared."

It thus being clearly demonstrated, as we think, both by common law and the affirmative legislative action that the statute commences to run against all claims so soon as the plaintiff could commence his action.

A few practical questions arise in this case: Can said statute be pleaded in *this cause of action*? If so, when does it commence to run, and for what length of time must it run?

To the former inquiry - can it be pleaded in this cause? —a conclusive answer would seem to be, here is this action

in court, and all causes of action in Iowa, of every conceivable character, are barred by some period of time—some by a longer, others by a shorter time. When, then, did the statute commence to run against this claim? Was it at the commencement of this suit, or was it sometime previous that he might have commenced his action? If for a time previous, how long?

We apprehend the counsel on the other side will not dispute that the right of action he is attempting to enforce to-day might have been commenced at the maturity of the coupons, to-wit, in January, 1860, more than ten years prior to the commencement of this suit.

The plaintiff in this case should not complain of our law and courts in furnishing him a remedy at an early day for this class of demands, and allowing him to bring a separate and independent suit without being the owner and holder of the bond, and before the maturity thereof, when he is simply to blame and to be punished (as some law writers term it) for not acting with promptness under the decisions in enforcing his legal rights against us. Neither should he complain because we are availing ourselves of our legal rights, secured to us by the same law and tribunals.

For the advancement of the commercial interests of the country and rendering more valuable coupon bonds by their ready negotiation and sale in the monied markets of the world, the courts of the United States have, we think, wisely changed somewhat the commercial law of the country as applicable to this class of securities, changing the rule in reference to the interest becoming due on this class of indebtedness, giving to the interest coupons thereto attached, all the character and attributes of negotiable paper. They may be at once severed from the bonds without it bein an *alteration* or *mutilation* of the instrument. They may be passed from hand to hand by delivery when made payable to bearer, as in this case; suit may be brought by the owner and holder thereof without any reference to who is the owner and holder of the bond, and whether the bond had before that time been fully paid off and

satisfied. Thus there is given them every attribute of independent negotiable paper.

In support of the above proposition we refer to the following decisions of this court:

In Gelpcke vs. The City of Dubuque, 1 Wallace, page 206. Mr. Justice Swayne, in delivering the opinion of the court, expresses the views of the court as follows:

"Bonds and coupons like these by universal commercial "usage and consent, have all the qualities of commercial "paper."

In Thompson vs. Lee county, 3 Wallace, 332, Mr. Justice Davis, in announcing the views of the court, says:

"It is not necessary that the holder of coupons, in order "to recover on them, should own the bonds from which they "are detached. The coupons are drawn so that they can be "separated from the bonds, and like the bonds, are negotiable, "and the owner can sue without the production of the bonds "to which they are attached or without being interested in "them."

In Aurora City vs. West, 7 Wallace, page 105, Mr. Justice Clifford, in rendering the opinion of the court, says:

"Bonds and coupons like these by universal usage and "consent have all the qualities of commercial paper. Cou- "pons are written contracts for the payment of a definite sum "of money on a given day, and being drawn and executed in "a form and mode for the very purpose that they may be sep- "arated from the bonds, it is held that they are negotiable, "and that suit may be maintained on them without the neces- "sity of producing the bonds to which they were attached. * * * * Being written contracts for the payment of "money and negotiable because payable to bearer and passing "from hand to hand as other negotiable instruments it is "quite apparent on general principles that they should draw "interest after payment of the principal is unjustly neglected "or refused."

And again in Com. of Knox county vs. Aspinwall, 25 Howard, 546, Mr. Justice Nelson says:

"A question was made upon the argument that the suit "could not be maintained upon the coupon without the pro- "duction of the bonds, to which they had been attached. But "the answer is that these coupons or warrants for the interest, "were drawn and executed in a form and made for the very "purpose of separating them from the bond, and thereby dis- "pensing with the necessity of its production at the time of "of the accruing of each installment of interest and at the "same time to furnish complete evidence of the payment of "the intrest to the makers of the obligation."

Thus we see by the decisions of this court and the commercial usages and necessities of the country, the coupons in suit possess all the attributes of any other commercial paper, and that too, independent of the bonds to which, at one time, they may have been attached as a part and parcel.

In this suit the coupons were not only long since severed from the bonds, and negotiated in market, but the bonds themselves, from which they were severed, have (long before the commencement of this suit) been paid off, satisfied and discharged by the defendant. See transcript plea, page ——.

Possessing, then, all the character of any other negotiable commercial paper, we fail to discover any reason why they should not be vulnerable to the plea of the statutes of limitation in the same manner as other commercial paper.

The courts of our country, as well as England, have repeatedly decided that in a suit brought for an installment due on a promisory note payable in installments, an action may be maintained on each installment as it becomes due, and the statutes of limitation begin to run as soon as each installment becomes due.

In Parsons on contracts, vol. 2, page 373, the author uses the following language on this subject:

"If money be payable by installments the statute begins to run as to each installment from the time when it becomes due; but if there be an agreement that upon default as to any one, all then unpaid shall become payable then the statute begins to run as to all upon any default."

The same doctrine is maintained in Bush vs. Stowell, 71 Pennsylvania, 208, which was an action of assumpsit on the following note :

"$1,556.95. For value received we jointly and severally "promise to pay A. C. Bush, or order, fifteen hundred and "fifty-six dollars and ninety-five cents, and interest (viz.) one-"fourth part of the principal and the interest on the whole "sum, on the first day of June, next, and the balance in three "equal yearly payments on the first of June in each year, with "annual interest on the whole sum.

[Signed,] H. STOWELL, and others.

November 20th, 1855."

Part of the installments had fallen due more than six years before suit was brought. The statute of limitations was pleaded, and the court in announcing its opinion says :

"If then the plaintiff could have maintained a suit for the "first installment in this case immediately after it fell due, "his cause of action then accrued and the statute of limita-"tions began to run. It is unnecessary to inquire what the law "would have been if this had been an action of debt, and the "plea *actio non accrevit infra sex annos*, for we have seen an "action of debt could not have been maintained on this prom-"isory note until after all the installments had fallen due. "But being assumpsit there would seem to be no question "that as to the first installment the action was barred."

The same doctrine is fully maintained in Burnham vs. Brown, 23 Maine, 400 :

The syllabus of the case I quote. "When a note is made "payable in several annual payments, the cause of action for "the first payment accrues so soon as it becomes payable, and "the statute of limitations begins to run against it from "that time and not from the time when the last sum should be "paid." Which is fully sustained by the text.

Tucker vs. Randall, 2 Mass., 283.

By what principle of law can our courts hold that the installments due on a note payable in installments may be

defeated by a plea of the statute of limitations, and that the *coupon warrants* being for *installments of interest*, and having been long before suit severed from the bonds, and negotiated by sale and delivery, possessing all the properties of any negotiable paper, with the right of third parties to sue thereon, *that they* cannot be successfully assailed by the same plea.

It is true that two courts in this country have held that one could not successfully plead the statute of limitations to annual interest due on a promisory note: We refer to Ferry vs. Ferry, 2 Cush., 92, and Grafton Bank vs. Doe, 19 Vermont, 467. For our purpose it is not necessary for us to question the accuracy of those decisions. They are based on the theory that, "the interest is regarded as an *incident of the debt* "*and recoverable with it*, and although the creditor may recov- "er for the interest which accrues before the principal be- "comes due, yet if he forbear to bring his action for that pur- "pose as he may, the interest remains incident to the debt, "and may be recovered with it." [The italics above are our own.] Ferry vs. Ferry, 2 Cushing, 92.

We apprehend that there exists no legal similarity in the two cases by reason of the change heretofore mentioned, made by the recent decisions of the United States courts, placing coupons on an *independent footing from the bond*, *giving them all the attributes of commercial paper*, allowing them to be negotiated, to be sued by the holder, although he may have no interest in the bond. They certainly cease to be an *incident of the debt* when held and owned by third parties, and suit brought thereon. It certainly could not in the language of the court in Ferry vs. Ferry be that, "the interest remains in- "cident to the debt and may be recovered with it," when the note itself had been paid off and satisfied.

The legal status of these intrest coupons is clearly defined in a recent case in the State of Rhode Island, in which they hold that a coupon once detached and negotiated ceases to be a mere *incident* of the bond and becomes an independent claim, and its amount with interest is recoverable.

National Ex. Bank vs. Hartford, Providence & Fishkill R. R. Co., 8 R. I. Reports, 375, cited 5, American Reports, 582.

The court in rendering its decision in the above case, makes use of the following language:

"It is further contended for the defendants that the coupons have no validity except as accessories of the bonds, and that the bonds having been extinguished by payment, the coupons are also extinct. But it appears on the record that the bonds have been paid and surrendered. It also appears that the coupons had been previously detached, and having thus, according to the cases we have cited, lost their character as mere incidents of the bonds, and become an independent claim, we are of the opinion that the payment of the bonds could have no effect on their validity. Indeed, to hold otherwise would thwart, if not defeat the very purpose for which the coupons were made separable from the bonds."

We cite the above as sustaining our view of the character of coupons, viewed from the recent decisions of this court, that when coupons are detached from the bond they lose their character as mere INCIDENTS of the bonds and become an independent claim, and therefore do not come within the rule in the apparent opposing cases we have cited of Ferry vs. Ferry, 2 Cushing, 92, etc. But they are governed by the same rules governing any other negotiable independent paper.

Having reviewed some of the elementary principles we will now notice the views of this court in two cases involving somewhat the question that arises in this case, (and which cases, we presume the counsel for the plaintiff will insist favor his views, though we have not, at present writing, been furnished with his argument, and cannot definitely say what his references may be.)

We refer to the case of The City vs. Lampson, 9 Wallace, 483, and Lexington city vs. Butler, 14 Wallace, 296.

A fair construction of the opinions announced in those cases, keeping in view the fundamental principles of the stat-

ute heretofore spoken of, the decisions of this court and others before cited, as to the independent character of the coupons, the evils intended to be remedied thereby, the liberal construction, application and enforcement thereof, as held latterly by courts in general, and especially so by the courts of our own State, (Iowa), whose decisions, this court, in that respect, will duly consider, leads us irresistibly to the conclusion that those cases have, by a reasonable inference, settled the question involved in this case, in our favor.

In the former case, The City vs. Lampson, a case from Wisconsin, where action upon sealed instruments were not barred until *twenty* years, actions upon simple promisory notes in *six* years, the statute was pleaded to a suit on sundry coupons held by plaintiff. More than six years had elapsed since the maturity of the coupon in suit, but not twenty, (the time at which the bonds would have been barred.) The court, in passing its judgment in the case, merely elaborates the idea that the coupons, being given for interest to become due on the bond "partook of its nature, and the bond "being of a higher security than a simple contract debt, is "not barred by lapse of time short of twenty years." "Our conclusion is, that the cause of action is not barred by lapse of time short of twenty years."

The court thereby, in effect, saying, that if twenty years had elapsed from the maturity of the coupon, it would have been barred.

In the city of Lexington vs. Butler, 14 Wallace, 288, a case from Kentucky, where the period of limitation on bonds is fifteen years, and on simple contracts five, the statute was pleaded, the coupons having matured more than five years before suit was brought.

The counsel in said case, in their argument before the court, seemed to concede the point contended for by us in this case, making use of the following language. [See page 288, paragraph 3.]

"But the obligation to pay this interest is embodied in "the bond itself, which is a specialty under seal and of a high "er nature than a simple contract, therefore no lapse of time "short of fifteen years, would bar an action, that bonds of this "character are specialties and that coupons attached to them "partake of their character and are governed by the same "*term* of limitation as governs the bond itself."

The court in announcing its decision on this branch of the case makes use of the following language:

"On the contrary suits upon bonds may be maintained "if commenced at any time within fifteen years next after the "cause of action accrued, and it is well settled law, that a suit "upon a coupon is not barred by the statute of limitations "*unless the lapse of time is sufficient* to bar also a suit upon the "bond, as the coupon, if in usual form, is but a repetition of "the contract in respect to the interest for the period of time "therein mentioned, which the bond makes upon the same "subject, being given for interest thereafter to become due "upon the bond, which interest is parcel of the bond, and par- "takes of its nature, and is not barred by lapse of time, *except* "for the same PERIOD as would bar a suit on the bond to which it was attached." (The italics above are our own.)

Now the reasonable and fair construction of the language of the court in rendering the decision, taken in connection with the point made by the counsel in the case, that the instrument he was suing on was a specialty and therefore not barred short of fifteen years, is this:

Your suit is founded on a coupon cut from a specialty—it partakes of the nature of the bond so far that it is also a specialty. It differs only, however, from the bond in *time* at which payable—as to that, it is payable before the bond is payable, but being a specialty, by virtue of its relation to the bond at its execution, it is not barred *unless* the lapse of time is sufficient to bar a suit on the bond, (which is fifteen years and not five as contended for by debtor.) In the decisions of the court in these cases they were simply settling *one point*,

and that as to *time*—the statute ran against the claim—was it six years or twenty—five or fifteen years. One partly contending for the shorter, and the other for the longer time.

That the statute would at some time bar a suit of this character was very evident by the language of the court. This action "is not barred by lapse of time *except* for the same period as would bar a suit on the bond to which it was attached."

What meaning is intended to be conveyed by term, "except for the same period?" Evidently the number of years that would be necessary to run against the bond; intending thereby a measure of time also applicable to coupons, to-wit, fifteen years, not thereby intending to fix and decide when the time commenced to run against the coupon, but merely to announce that when the statute commenced to run, it must run for fifteen years before the bar would be complete.

The decision on the case did not require any fixing of the time when the statute commenced to run against the coupons as it was conceded that five years had run but not fifteen, and they simply asked the court to decide in such class of cases, which term applied five or fifteen years, which point was so decided and leaving the rule of law as it always has existed, to fix the time when it would commence to run against the same from the time a cause of action could have been brought by the complainant on the *coupons* in the suit.

It seems to us this court did not intend to change the rule so long recognized by all courts that the statute of limitations would commence to run against a claim so soon as a legal right to bring suit accrued to a party. The rule is a good one by reason of its universal adoption by the courts of the country. It is a proper one by reason of its certainty in fixing an accurate time on *all* cases in which the statute should commence to run.

No good reason exists why the policy of the law should be changed in favor of securities of this class. It would not in any degree render this class of paper more negotiable eith-

er at home or abroad, for when a purchaser invests in these securities he intends and expects to reap the fruits of the investment as soon as they become due. It should not be changed because the majority of such securities are held and owned by non-resident creditors.

They should have equal facilities for collecting their claims as home creditors and no greater. The strict rules of the statute should apply to such claims as to all others. Public policy would dictate a more stringent rule perhaps in this class of claims. If difference is allowed to either as this class of securities "bonded indebtedness"—is usually issued by cities, counties, towns and railroad companies running long periods of time, from twenty to fifty years; the cities and corporations issuing them are constantly changing their officers and agents, a very imperfect and more frequently no record is kept by the officers issuing them, so that in the progress of time and frequent changes of the officers managing the affairs of such corporate bodies, (when these bonds run long periods of time) they loose sight of such indebtedness, so much so, that the subsequent officers frequently cannot tell when or where they are payable. Adopt the rule contended for and only mischief would be the result. On bonds running the period of fifty years for illustration, if they should be negotiated in Europe and there held by capitalists, with such a rule of law existing, that the coupons would not mature until the fifty years, the maturity of the bond, think you that creditors would desire to present their coupons for adjustment; would they in many cases ever be presented until the full time expired, as the interest thereon would be accumulating in their favor.

We all are aware how indifferent all these corporate bodies are to think of or care to interest themselves about debts of which they may not be called upon to pay, or at all events are careless about until urged upon their attention by frequent reminders by way of presentation of coupons promptly for payment. How crushing and disastrous it would be after almost two generations should have passed away since their issue, for

these bonds to be presented for payment against cities, towns, counties and corporations with the accumulated interest upon interest of one-half a century.

This is no fancy sketch, but what would probably happen in many cases should the rule contended for be ever adopted by courts of this country.

The settled rule is the wise one, founded on the wisdom and experience of centuries, viz: "*That the statute of limitations is a wise enactment, and in its application to all cases it should commence to run as soon as a cause of action accrues.*" It should be favorably considered by the courts, and its beneficial effects administered alike to claims of every kind and character, and when any doubt exists in the minds of the court in its application it should be solved in favor of public policy, expediency and justice as embodied in said statute.

If as the courts of the country seem to hold, it be wise and expedient to apply the statute to causes of action arising on the installments as they fall due on a promissory note, by analogy and reason, why should they not apply it to cases like the present one, founded on installments of interest evidenced by a written separate independant instrument, possessing all the qualities of negotiable paper?

And in reference to this species of paper there can be no doubt as to the rule as laid down by Parsons on Bills and Notes, vol. 2, page 639, where the following language is used by him:

"The period of limitation begins to run in reference to a promissory note, whether negotiable or not, whenever a cause of action upon the note accrues, as the text is fully sustained by the numerous cases cited in the note to same."—[Note D.]

We suggest further, the original holder of the bonds from which the coupons in suit were cut, has by his own *voluntary act* in severing them from the bond, to which they originally belonged, given them a character they did not possess while annexed thereto, and which they would have retained had he not preferred to give them the negotiable and independant character of negotiable paper with all the priviliges of such,

together with all the disabilities attached thereto by virtue of their being negotiated in market, as commercial paper. He therefore and those deriving title through him or subsequent transfers cannot justly complain of the legal consequences that necessarily attach to the instrument. They have therefore *waived* their right, *if* such ever did exist, to prevent the bar of the Statute, by allowing the coupon to remain attached to the bonds until their maturity. The coupons in suit are in the usual form for fifty dollars payable to bearer on the first day of January, 1860, made in form for the very purpose of being negotiated and sold in market if so desired. It is a historical fact that in many instances they are at once severed from the bonds and thrown on the market as other commercial paper, why then should they have privileges not possessed by other commercial paper? The courts have very justly said that they partake of the nature of the Bond in this that they are specialties instead of simple contracts and one not vulnerable to the plea of the statute of limitations unless you plead the limitations fixed for such class of indebtedness, which we have done in this case. We submit that commercial necessities do not require further protection for this class of indebtedness. But that this class of creditors should be punished for their neglect in not promptly enforcing their demands within the reasonable time fixed by the statute from the accruing of their cause of action.

By way of re-capitulation we think we are justified by the decission cited in saying that the Statute of limitators begins to run against any claim so soon as an action may be brought thereon. That by the decissions of this court Coupons or interest warrants (which are the basis of this suit) have all the character and incidents of independent negotiable paper and suit may be brought thereon by any party being the holder thereof, so soon as they mature, that so soon as an action may be brought thereon the Statute begins to run as a ligitimate sequence.

By the laws of Iowa as we have seen ten years is the

period of limitations fixed both upon Bonds and Coupons. (Revision of Iowa Sec. 2529.)

That the Rule contended for by the plaintiff if adopted by this court would etirely change the rule when the Statute would commence to run against this class of claims, or we would have the anomaly of a right of action existing without the statute running against it, or we would have different periods of time under the same statute barring the same class of claims. As an illustration, if the interest coupon matures five years before the bond, (then according to theory of the plaintiff) the coupon would not be bound short of fifteen years, after an action could have been brought thereon, the bond being under statute of Iowa barred in ten years, a similar coupon cut from the same bond maturing one year later would have a limitation of fourteen years, and all under the same statute fixing the limitation at ten years in all cases of this class.

We think in conclusion the Circuit Court did not err in its judgment in overruling the plaintiffs demurer to the defendants plea of the statute of limitations.

ROBINSON & PATTERSON,
By L. B. PATTERSON.

Iowa City, Sept. 21st, 1874.